

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3320 OF 2019

**Nisha S.
Chitnis**

Arif Khalil Khan

.Applicant

Vs.

The State of Maharashtra

.Respondent

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by Nisha S.
Chitnis

Date: 2021.01.13
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Mr. Gaurav Bhawnani i/b. A. W. Khan, Advocate, for the Applicant
Mr. A. R. Patil, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 12.01.2021

P. C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks his enlargement on bail in connection with C. R. No. 149 of 2018 registered with the Deonar Police Station, for the alleged offences punishable under Sections 302, 506(2) r/w 34 of the Indian Penal Code and Sections 37(1) and 135 of the Maharashtra Police Act.

3. Learned counsel for the Applicant submits that the incident in question which took place on 01.06.2018, appears to have taken place on the spur of the moment. He submits that it appears from the

prosecution case that a quarrel took place between the accused No. 1 – Tahir and the deceased – Ahmed, over right of way, pursuant to which the accused No. 1 stabbed Ahmed. He submitted that although the prosecution has alleged that in the quarrel that took place between the accused No. 1 – Tahir and the deceased – Ahmed, the Applicant (Original Accused No. 2) assaulted the deceased by fist and kick blows, the Post Mortem Report reveals that the deceased had sustained only one stab injury and no other injury. He submitted that the Applicant has no antecedents and that in the two earlier cases registered against the Applicant, the Applicant has been acquitted in one case and a ‘C’ Summary is filed in the other. He further submitted that the Applicant is in custody since 17.10.2018 and that investigation is complete and chargesheet is filed.

4. Learned APP opposed the Application.

5. Perused the papers. It is the prosecution case, that in the incident that took place on 01.06.2018 at about 8.45 p. m., the Accused No. 1- Tahir assaulted the deceased with a knife and the Applicant and another co-accused allegedly assaulted the deceased by fist and kick blows. It also appears that when the Complainant asked the deceased as

to what had happened, the deceased disclosed that the Accused No. 1 – Tahir had assaulted him with a knife in his chest and that he should be taken to the Doctor. It appears that when the deceased was taken to the hospital, shortly thereafter, within a few minutes, he succumbed to the said injury. As far as the Applicant is concerned, he is alleged to have assaulted Ahmed by fist and kick blows. A perusal of the Post Mortem Report reveals that the deceased had sustained only one single injury i. e. over the left side of the chest, and that no other injuries / fracture were seen. The cause of death is also stated to be stab in the chest. Learned counsel for the Applicant states that the Applicant has no antecedents. Statement accepted. Investigation is complete and charge-sheet is filed. The Applicant is in custody since October, 2018.

6. Considering the role of the Applicant and what is stated aforesaid, the Application is allowed and the Applicant is enlarged on bail on the following terms & conditions :-

O R D E R

- (i) The Applicant be enlarged on bail, on executing PR Bond in the sum of **Rs. 25,000/-** with one or two sureties in the like amount;
- (ii) The Applicant shall report to the investigating officer of the concerned police station on the **first Sunday of every month** between

10:00 a. m. and 12:00 noon till the conclusion of the trial;

(iii) The Applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(iv) The Applicant shall inform his latest place of residence and mobile contact number immediately after being released and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The Applicant to co-operate with the conduct of the trial and attend all the dates before the trial Court;

(vi) The Applicant shall file an undertaking with regard to clauses (ii) to (v) in the trial Court, within two weeks of his release;

(vii) If there is a breach of any of the aforesaid conditions, the prosecution shall be at liberty to seek cancellation of the Applicant's bail.

7. The Application is allowed in the aforesaid terms and is accordingly disposed of.

8. It is made clear that the observations made herein are

prima facie, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

All concerned to act on the authenticated copy of this order digitally signed by Personal Assistant / Private Secretary.

(REVATI MOHITE DERE, J.)